

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
February 17, 2009 Session

**STEVE NEELEY v. ALMEDIA NEELEY**

**Appeal from the Chancery Court for Bedford County**  
**No. 26,267 J. B. Cox, Chancellor**

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**No. M2008-01575-COA-R3-CV - Filed April 21, 2009**

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The only surviving child of the decedent filed this Complaint against the decedent's surviving spouse to quiet title and for partition to real estate conveyed to his father in 1975. The plaintiff contends the 1975 deed conveyed a life estate to his father with the remainder interest to his father's heirs in fee simple at his father's death. The plaintiff's father died in 2004, and it is undisputed that he was survived by only two heirs, the plaintiff and the defendant. The plaintiff contends that he and the defendant each own an undivided one-half interest in the property. The defendant, however, contends her husband acquired a fee simple interest in the property, after which she became a tenant by the entirety with her husband, and, therefore, she became the sole owner of the property at her husband's death. The trial court found that the original deed granted the decedent a life estate with a remainder to his heirs in fee simple, that any subsequent conveyances by the decedent were subject to the decedent's life interest, and that the decedent's heirs acquired fee simple title upon the decedent's death. On appeal, the defendant contends the trial court erred in finding the original conveyance merely granted her husband a life estate; she also contends the class of "heirs" within the conveyance is void as a violation of the Rule Against Perpetuities. We have determined, as the trial court did, that the original conveyance granted the decedent a life estate with a remainder to his heirs in fee simple, and that the conveyance did not violate the Rule Against Perpetuities. We, therefore, affirm the trial court's ruling that fee simple title to the property passed upon the decedent's death to his heirs, the plaintiff and the defendant, in equal shares.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed**

FRANK G. CLEMENT, JR., J., delivered the opinion of the court, in which PATRICIA J. COTTRELL, P.J., M.S., and RICHARD H. DINKINS, J., joined.

William Kennerly Burger and Claire S. Burger, Murfreesboro, Tennessee, for the appellant, Almedia Neeley.

Megan A. Kingree, Shelbyville, Tennessee, for the appellee, Steve Neeley.

## OPINION

The matters in dispute arise from an inconsistency in a 1975 warranty deed pursuant to which Thomas S. Neeley acquired either a life estate or fee simple ownership of property in Bedford County. The parties to this action are the heirs of Thomas Neeley, who died on September 20, 2004. The defendant, Almedia Neeley, is the surviving spouse of Thomas Neeley. The plaintiff, Steve Neeley, is the only surviving issue of Thomas Neeley.<sup>1</sup> It is undisputed that the defendant and plaintiff are the only surviving heirs of Thomas Neeley.<sup>2</sup>

Thomas Neeley took title to the disputed property under an April 25, 1975 warranty deed, the granting clause of which states that the grantor “transfer[ed] and convey[ed] unto THOMAS S. NEELEY, for and during his natural life and at his death to his heirs, the following described tract or parcel of real estate. . . .” The habendum clause of the deed, which contained substantially similar language to the granting clause but contained four additional words, states “TO HAVE AND TO HOLD the above described tract or parcel of real estate unto the said Thomas S. Neeley, for and during his natural life and at his death to his heirs, *forever in fee simple.*” (emphasis added).

Over the next thirty years, Thomas Neeley entered into several transactions involving the property. The first transaction occurred on February 12, 1981, when Thomas Neeley executed a note and deed of trust on the property in order to obtain a loan from Calvary Bank. The deed of trust was also signed by the defendant. The second transaction occurred seven years later, after Thomas Neeley defaulted on the note, when Cavalry Bank foreclosed on the deed of trust, and the foreclosure deed stated that fee simple ownership was conveyed to the Bank. The third transaction occurred on June 8, 1988, and for reasons not clear from the record, Cavalry Bank executed a deed to Thomas Neeley and “his heirs and assigns . . . in fee simple.”<sup>3</sup> Concurrent therewith, a new Deed of Trust was signed by Thomas Neeley, Almedia Neeley, Steve Neeley and Larry Neeley, Thomas Neeley’s other son. The fourth transaction occurred in February 1995, when Thomas Neeley executed a warranty deed to the defendant “for life.” The fifth transaction occurred on June 13, 2002, when the defendant conveyed to Thomas Neeley all of her interest in the land by a quitclaim deed and, concurrent therewith, Thomas Neeley executed a deed to “my wife, Almedia Neeley, her heirs and

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<sup>1</sup>The plaintiff, Steve Neeley, is a child of Thomas S. Neeley from a previous marriage. Thomas Neeley had another son, Larry Neeley, from the same previous marriage. Larry Neeley predeceased his father, leaving no issue, thus Larry Neeley was not an heir of his father at his father’s death.

<sup>2</sup>Trudy Neeley, the widow of Thomas Neeley’s other son, Larry Neeley, was identified as an heir and named as a party to this action when it was first filed; however, she was not an heir of Thomas Neeley. Thus, she was voluntarily dismissed.

<sup>3</sup>The plaintiff insists the new deed and deed of trust were required by the Bank when it discovered that Thomas Neeley only had a life estate in the property and its foreclosure deed was flawed.

assigns, such of my right, title and interest in and to (the property) . . . as will create a tenancy by the entirety in and to the said tract of land.”<sup>4</sup>

Following Thomas Neeley’s death, Steve Neeley (Plaintiff) filed a Complaint to Quiet Title and for Partition of the real estate on April 13, 2006. For relief, he requested that the property be sold and the proceeds divided equally between Plaintiff and Almedia Neeley (Defendant), the only surviving heirs of Thomas Neeley. A bench trial, upon stipulated facts, was held on May 22, 2008. On June 6, 2008, the trial court issued a Memorandum Opinion, which was incorporated into an order wherein the court found that the original conveyance to Thomas Neeley granted only a life estate with a remainder in his heirs. The court also found that the remainder interest did not violate the Rule Against Perpetuities. Further, the trial court ordered the property be sold and the proceeds divided between the two heirs, Plaintiff and Defendant. Thereafter, Defendant filed this appeal.

### STANDARD OF REVIEW

The facts of this case were stipulated to by the parties. The issues presented are only questions of law. The standard of review for questions of law is de novo upon the record with no presumption of correctness. *Union Carbide Corp. v. Huddleston*, 854 S.W.2d 87, 91 (Tenn. 1993).

### ANALYSIS

Defendant raises two arguments. First, she contends that the 1975 deed granted her husband Thomas Neeley fee simple title, that she subsequently became a tenant by the entirety with her husband, and that upon his death she acquired, by right of survivorship, a 100% fee simple interest in the property. In the alternative, she contends that the 1975 deed violated the Rule Against Perpetuities because the remainder class, the heirs, was not identifiable nor was it vested at the time of the conveyance. Under either theory, she contends she is the sole owner of the fee simple interest in the property.<sup>5</sup>

The dispositive issue is the determination of the interest conveyed to Thomas Neeley in the 1975 deed because any subsequent conveyance by Thomas Neeley was limited to the rights and interests he acquired under the 1975 deed.

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<sup>4</sup>Cavalry Bank released the deed of trust on the property on April 19, 1992; thus, the property was not encumbered at the time of Thomas Neeley’s death.

<sup>5</sup>The defendant also appears to raise the issue of merger on appeal. The doctrine of merger applies “when the holder of a life estate in property also purchases a vested remainder in the property, merger takes place and that person becomes the holder of the fee simple in the property.” *Davis v. Winsett*, No. 02A01-9106-CH-00100, 1991 WL 236848, at \*2 (Tenn. Ct. App. Nov. 15, 1991) (citing 1 Tiffany, *Real Property*, § 70). We find this doctrine has no application to the facts of this case, as Thomas Neeley, the life tenant, never acquired a vested remainder interest in the property.

A.

A deed is to be construed to effect the intention of the grantor. *Barber v. Westmoreland*, 601 S.W.2d 712, 714 (Tenn. Ct. App. 1980) (citing *Thornton v. Thornton*, 282 S.W.2d 361, 363 (Tenn. Ct. App. 1955)). The intent of the grantor “is to be ascertained from a ‘consideration of the entire instrument, read in the light of the surrounding circumstances.’” *Id.* (quoting *Thornton*, 282 S.W.2d at 363). “[W]ords are to be construed as the grantor intended and not necessarily in their technical sense.” *Id.* (citing *Hutchison v. Board*, 250 S.W.2d 82, 84 (Tenn. 1952)). “In construing a deed, the intention of the grantor will be determined without resort to technical rules of construction such as division of the deed into its formal parts with certain parts prevailing over others if at all possible.” *Id.* (citing *Bennett v. Langham*, 383 S.W.2d 16, 19-20 (Tenn. 1963)). The intention of the grantor is “ascertained by consideration of the entire instrument of conveyance.” *Id.* (quoting *Lockett v. Thomas*, 165 S.W.2d 375, 376 (Tenn. 1942)). As in construing a will, when construing a deed, “the Court is primarily concerned in trying to ascertain the intention of the parties.” *Id.* (quoting *Collins v. Smithson*, 585 S.W.2d 598, 603 (Tenn. 1979)). All of the provisions of a deed are to be considered together and the intention of the grantor of a deed is to “be ascertained from the entire document, not from separate parts thereof, if at all possible.” *Id.* (quoting *Collins*, 585 S.W.2d at 603).

The granting clause in the 1975 deed stated in pertinent part:

I, BOBBY VANDYGRIFF, have this day bargained and sold, and do by these presents transfer and convey unto THOMAS S. NEELEY, for and during his natural life and at his death to his heirs, the following described tract or parcel of real estate  
....

The relevant language in the granting clause of the 1975 deed is repeated in the habendum clause,<sup>6</sup> but that language is followed by four words, “forever in fee simple,” that do not appear in the granting clause. The language in the granting clause unequivocally grants Thomas Neeley a life estate; however, the habendum clause reads in relevant part, to Thomas S. Neeley “for and during his natural life and at his death to his heirs, *forever in fee simple*.” The question then is whether this

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<sup>6</sup>The “habendum clause” is defined in Black's Law Dictionary (8th ed. 2004) as “The part of an instrument, such as a deed or will, that defines the extent of the interest being granted and any conditions affecting the grant. The introductory words to the clause are ordinarily ‘to have and to hold.’” Black’s Law Dictionary goes on to explain:

“This part of the deed [the habendum clause] was originally used to determine the interest granted, or to lessen, enlarge, explain or qualify the premises. But it cannot perform the office of divesting the estate already vested by the deed; for it is void if it be repugnant to the estate granted. It has degenerated into a mere useless form; and the premises now contain the specification of the estate granted, and the deed becomes effectual without any habendum. If, however, the premises should be merely descriptive, and no estate mentioned, then the habendum becomes efficient to declare the intention; and it will rebut any implication arising from the silence of the premises.”

*Id.* (quoting 4 James Kent, *Commentaries on American Law* \*468 (George Comstock ed., 11th ed. 1866)).

inconsistency, the four extra words in the habendum clause, should be construed as a conveyance of a fee simple interest to Thomas Neeley.

This court had to reconcile a similar inconsistency between the granting clause and the habendum clause of a deed in *Barber v. Westmoreland*, 601 S.W.2d 712, 713-14 (Tenn. Ct. App. 1980). The language in the *Barber* granting clause stated “unto William [Barber] during his natural life and at his death to me or my heirs if I survive him.” *Id.* at 713. The *Barber* habendum clause, however, stated “unto the said William [Barber] his heirs and assigns forever,” thus appearing to convey a fee simple interest to William Barber. *Id.* at 713-14. The *Barber* court resolved the inconsistency with the following analysis:

Clearly, the granting clause of the deed, “unto William Barbree<sup>7</sup> during his natural life,” gives plaintiff a life estate. The habendum uses the language, “[t]o have and to hold unto the said William Barbree his heirs and assigns forever.” There seems to be an irreconcilable conflict between the granting clause and the habendum clause, and if these phrases were all of the language, there would be such a conflict. Here, however, plaintiff is granted a life estate with the remainder to the grantee (Mary Barbree) “or my heirs.”

In *Quarles v. Arthur*, 33 Tenn. App. 291, 231 S.W.2d 589 (1950), “the granting clause of the deed . . . created a life estate in [the grantee] with the remainder to the heirs of her body living at the time of her death,” and the habendum contained the language, “to the said [grantee] her and her heirs and assigns.” *Id.* at 294, 231 S.W.2d at 590. Here upon the death of plaintiff the property was to revert to Mary Barber or her heirs, and in *Quarles* at grantee’s death the property was to go to the grantee’s heirs. The Court in *Quarles* stated:

[U]nder the primary rule of considering the instrument as a whole without regard to formalisms, there is no sufficient predicate for assuming any substantial conflict between the granting clause and the habendum and covenant. We think the vice of appellants’ argument lies in their overlooking the grant of a remainder interest to the heirs of the body of the life tenant. When the vesting of that estate under the terms of the granting clause is considered, the effect of the habendum, under appellants’ construction, is entirely to eliminate the fee title granted in remainder to the heirs. Why would the grantor so carefully carve out a life estate as indicated by the language “to her [for] her life time” and grant the remainder in fee to the heirs of the

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<sup>7</sup>The opinion and deed in *Barber v. Westmoreland* each refer to William Barber as “William Barbree” and Mary Barber as “Mary Barbree” stating “(William Barbree being the same person as plaintiff William Barber)” and “(Mary Barbree being the same person as plaintiff’s deceased wife, Mary Barber).” *Barber v. Westmoreland*, 601 S.W.2d 712, 713 (Tenn. Ct. App. 1980). To avoid confusion, we refer to them as William Barber and Mary Barber.

body of the life tenant, as appellants concede, only to enlarge the life estate and eliminate, in the habendum, the grant of the fee to the remaindermen? *Id.* at 296-97, 231 S.W.2d at 591.

In *Bennett v. Langham*, *supra*, the Court said:

Of all the technical words creating an estate, those creating a life estate are the most easily understood. Certainly they are more easily understood by a layman than the terms tenancy by the entirety, joint tenancy, fee-tail, etc. Therefore it is reasonable to assume that the import of the words life estate were [sic] understood by the grantor more so than the legal phrasing in the habendum and covenant clauses and the legal significance of the sentence following the description which, it is contended, creates a tenancy by the entirety. It is doubtful that the grantor ever heard of such an estate.

The habendum and covenant clauses of the deed are in their regular form. It is also reasonable to assume that the drafter of the instrument did not know that there was any required variance from the printed form of the habendum and covenant clauses required for the granting of a life estate. 214 Tenn. at 682, 383 S.W.2d at 20.

That the language of the deed in the case at bar, drafted by Marshall Hall, a justice of the peace, is inartistic is conceded by all parties. No showing has been made that either the grantor or grantee, who were relatively young at the time the deed was drawn, or Mr. Hall, who drew the deed, possessed any particular legal background or understanding. The creation of a life estate was certainly within the contemplation of, and understood more readily by, the parties than the legal significance of “heirs and assigns.”

We are of the opinion that the construction placed on the deed by the Chancellor is logical and gives effect to all of the deed. The Chancellor’s construction gives effect to the intention of the grantor to show that title passed to her heirs if she failed to survive plaintiff. Also, if the grantor had survived plaintiff, the fee is fully vested in her since plaintiff’s life estate would have been at an end and she could have done with it as she pleased. The language, “It being understood that the vendor herein reserves the rents and profits off said above described land during her natural life and during the life of the vendee and that should the vendor survive the vendee theis [sic] conveyance to become null and void and of no effect,” is given meaning. If the effect of the habendum was to grant a fee to plaintiff, this reservation would be inconsistent. The first issue raised by plaintiff is without merit.

*Barber*, 601 S.W.2d at 714-15. The *Barber* court went on to hold that the language contained in the granting clause controlled, which stated, “during his natural life and at his death to me or my heirs”; therefore, the deed merely conveyed a life estate to the grantee with a contingent remainder in the grantor or to the grantor’s heirs should the grantor predecease him. *Id.* at 714; *see also Gregory v. Alexander*, 367 S.W.2d 292 (Tenn. Ct. App. 1962).

The granting clause in the 1975 deed to Thomas Neeley unequivocally states that he received the property “for and during [Thomas Neeley’s] natural life and at [Thomas Neeley’s] death to [Thomas Neeley’s] heirs.” Applying the reasoning in *Barber*, we find the 1975 deed granted the decedent a life estate, not a fee simple interest.

#### B.

Defendant also contends the remainder interest conveyed to the “heirs” of Thomas Neeley violates the Rule Against Perpetuities because the remainder class was neither identifiable nor closed at the time of the vesting. Defendant’s argument is based on the contention that Thomas Neeley did not have heirs when the property was conveyed to him in 1975 because he was alive at the time of the conveyance. We find no merit to these contentions.

The rule against perpetuities is that executory limitations, in order to be valid, “must vest in interest, if at all, within a life or lives in being and 21 years and a fraction thereafter, or the term of gestation in cases of posthumous birth.” *Hassell v. Sims*, 141 S.W.2d 472, 475 (Tenn. 1940) (quoting *Eager v. McCoy*, 228 S.W. 709, 711 (Tenn. 1921)). The executory limitation at issue here vests at the time of Thomas Neeley’s death; thus, it vested during a life that was in being at the time of the 1975 deed, Thomas Neeley. Therefore, if the heirs who receive the remainder interest are the subject of a proper class, the 1975 deed does not violate the Rule Against Perpetuities. We have determined the heirs are the subject of a proper class.

Deeds containing executory limitations such as that in the 1975 deed to Thomas Neeley have been held to create a life estate with a valid remainder interest ever since the abolition of the rule in Shelley’s Case in 1851 with the enactment of Tennessee Code Annotated § 66-1-103.<sup>8</sup> As this Court has noted, prior to the statutory abolition of the rule, a deed that conveyed an interest in realty to someone “during her natural life” and “at her death to descend to her bodily heirs” came under the rule in Shelley’s Case and gave “the first taker the whole estate.” *Delk v. Williams*, 10 Tenn. App. 246, 1929 WL 1640, at \*4 (Tenn. Ct. App. Sept. 28, 1929). However, because the rule has long been abolished, a life estate is created in “the first taker” with the remainder to those who take at the termination of the life estate. *Id.* “Where a deed conveys a life estate to a person with remainder to his heirs, the heirs will, under the statute abolishing the rule in Shelley’s Case, take a remainder estate.” *Union Ry. Co. v. Clifton*, 280 S.W. 28, 29 (Tenn. Ct. App. 1926) (citing *Teague v. Sowder*, 114 S.W. 484, 490 (Tenn. 1908)).

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<sup>8</sup>Had the rule in Shelley’s Case not been abolished by statute, then the 1975 deed would have conveyed to Thomas Neeley a fee simple interest; however, the rule was abolished by statute with the 1851 enactment of Tenn. Code Ann. § 66-1-103.

Here, the triggering event that defines who is in the class of remaindermen is the death of the life tenant, Thomas Neeley. *See Brown v. Seal*, 179 S.W.3d 481, 485-86 (Tenn. Ct. App. 2005) (citing *Fehringer v. Fehringer*, 439 S.W.2d 258 (Tenn. 1969)); *see also Jordan v. Jordan*, 239 S.W. 423 (Tenn. 1921). This is the case regardless of whether the limitation uses the term “heirs” or “heirs of the body.” *Brown*, 179 S.W.3d at 486. Tennessee Code Annotated § 66-1-103 provides that

Where a remainder is limited to the heirs or to the heirs of the body of a person, to whom a life estate in the same premises is given, the persons who, on the termination of the life estate, are heirs or heirs of body of such tenant, shall take as purchasers, by virtue of the remainder so limited to them.

Based upon the foregoing, we have determined the 1975 deed granting the contingent remainder to Thomas Neeley’s “heirs” did not violate the Rule Against Perpetuities; therefore, following the death of Thomas Neeley, the remaining interests passed to his heirs, Plaintiff and Defendant.

#### IN CONCLUSION

The judgment of the trial court is affirmed in all respects, and this matter is remanded with costs of appeal assessed against Almedia Neeley.

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FRANK G. CLEMENT, JR., JUDGE